

Decision 03-12-023

December 4, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking to implement the provisions of
Public Utilities Code § 761.3 enacted by
Chapter 19 of the 2001-02 Second
Extraordinary Legislative Session.

R.02-11-039
(Filed on November 21, 2002)

ORDER MODIFYING AND DENYING REHEARING
OF DECISION 03-09-002

In Decision (“D.”) 03-09-002, the Commission named additional respondents to Rulemaking (“R.”) 02-11-039. AES Alamitos, LLC, AES Huntington Beach, LLC, and AES Redondo Beach, LLC (“AES”) and Mirant Delta, LLC and Mirant Potrero, LLC (“Mirant”) have filed applications for rehearing of D.03-09-002. AES and Mirant contend that the decision errs in stating that they are appearing in this proceeding as respondents.

We have reviewed each and every allegation of error raised in the application for rehearing and are of the opinion that AES and Mirant have not demonstrated good cause for rehearing. However, we will modify our decision to clarify that we recognize that AES and Mirant have objected to being named respondents in this proceeding.

I. BACKGROUND

D.03-09-002 is a decision in our rulemaking to implement Public Utilities Code section 761.3. Section 761.3, which was enacted in 2002 in response to the energy crisis. The statute provides, in part:

Notwithstanding subdivision (g) of Section 216 and
subdivisions (c) and (d) of Section 228.5,¹ the

¹ Public Utilities Code section 216(g) and section 228.5(c) and (d) provide that an “exempt wholesale generator” is not a public utility.

commission shall implement and enforce standards adopted pursuant to subdivision (b) for the maintenance and operation of facilities for the generation of electrical energy owned by an electrical corporation or located in the state to ensure their reliable operation.

(Pub. Util. Code § 761.3(a).)

On November 21, 2002, the Commission issued R.02-11-039, which names three utilities and five other entities as respondents. AES and Mirant were included on the list of named respondents.² (See R.02-11-039, Appendix B.) In addition, the rulemaking states that “[o]wners and operations of divested plants will be respondents in this rulemaking.” (R.02-11-039 at p. 4.) In D.03-09-002, the Commission named additional respondents to the rulemaking. (D.03-09-002, Attachment B.) However, no change was made to the status of the original eight respondents (D.03-09-002, Attachment A.)

On October 6, 2003, AES and Mirant filed applications for rehearing of D.03-09-002. AES and Mirant (“Applicants”) contend that the decision mischaracterizes the nature and status of their appearances in this proceeding. Applicants state that they have continuously objected to being named in the rulemaking as respondents and are appearing on a voluntary basis as interested parties. In particular, applicants object to language in Attachment A to D.03-09-002, which states: “No party or individual identified for the purpose of appearing for an entity named as a respondent filed an objection.” (D.03-09-002, Attachment A, at pp. 2-3, fn. 1.)

II. DISCUSSION

As Applicants point out, the Administrative Law Judge (“ALJ”) in this case has repeatedly acknowledged that Applicants have reserved their right to challenge, at a later time, their designation as respondents. (February 10, 2003

² San Diego Gas & Electric Company (“SDG&E”), Pacific Gas & Electric Company (“PG&E”), and Southern California Edison Company (“Edison”) are the utility respondents. (R.02-11-039 at p. 9, Ordering Paragraph 2.)

PHC Transcript at pp. 42-43; September 23, 2003 Ruling on Service List at pp. 5-6.) At the same time, acceptance of Applicants' participation as "interested parties" does not change the Commission's designation of those entities as respondents.

In creating the service list at the PHC [pre-hearing conference], appearances were accepted from some persons or entities as interested parties rather than respondents. This was done as an administrative convenience to create the service list and move the proceeding forward. This neither changes the Commission's designation of some persons or entities as respondents (OIR, Ordering Paragraph 2), nor modifies any legal obligation a respondent may have.

(February 19, 2003 Scoping Memo at p. 6.)

Applicants contend that certain statements in D.03-09-002 mischaracterize the nature and status of Applicants' appearance in this proceeding. AES and Mirant are essentially requesting that the Commission to acknowledge their objections to being designated as respondents and their reservation of the right to challenge such designation at a later time in the appropriate forum.

There is no real controversy here. We clarify by this order that Applicants, although named as respondents by this Commission, have objected to such designation and have reserved their right to challenge such designation. In D.03-09-002, we stated that "[n]o party or individual identified for the purpose of appearing for an entity named as a respondent filed an objection." (D.03-09-002, Attachment A, at pp. 2-3, fn. 1.) The intent of this language was not to suggest that no party objected to being named a respondent. Rather, this sentence refers to the fact that there was no objection to the specific individuals or parties being identified being included as agents or representatives of the listed electric generating companies (the named "respondents"). We will modify the decision to clarify our intent.

III. CONCLUSION

For all of the foregoing reasons, we will deny rehearing but will modify the decision to reflect parties' objections to being named as respondents to this proceeding.

Therefore **IT IS ORDERED** that

1. D.03-09-002 is modified as set forth below:

- a. At the end of the second full paragraph on page 2, which discusses Attachment A and the eight entities identified as respondents in the initial rulemaking, add the following parenthetical language:

(We note that several entities have objected to being names as respondents to this rulemaking and have reserved their rights to challenge that designation in the appropriate forum. Those entities have stated that they are appearing on a voluntary basis as interested parties.)

- b. On page 3 of Attachment A, delete the last sentence of footnote 1 and replace it with the following:

No party or individual identified for the purpose of appearing for an entity named as a respondent filed an objection to the addition of that party or individual as an agent or representative of the named respondent. However, as we have previously noted, a number of entities named as respondents have objected to their designation as such, and instead have entered voluntary appearances with interested party status.

2. The applications for rehearing of D.03-09-002, as modified, are denied.

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This order is effective today.

Dated December 4, 2003 at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners